

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF AN APPEAL
VR/24/1999
BETWEEN
KEN BOYDE - APPELLANT
AND
THE COMMISSIONER OF VALUATION - RESPONDENT

Lands Tribunal - Mr Michael R Curry FRICS FSVA IRRV MCI.Arb

Coleraine - 13th September 1999

This appeal was about a temporary allowance for the difficulties that flowed from the uncompleted state of a small housing development. The Appellant, Mr Ken Boyde, lived in Greystone Park, a cul-de-sac of some 9 sites, on which development began some 10 years ago. The Boyde's were the first to move in, about September 1989, and two neighbours moved in shortly afterwards. Until a fourth dwelling was commenced recently, no more houses had been built.

Mr Ken Boyde appeared in person and also gave evidence. Mrs E Anne Kyle appeared on behalf of the Commissioner, and called Mr Nicholas Browne, an experienced Chartered Surveyor, to give expert evidence.

The three developed sites were the sites furthest away from the main road. A tarmacadam base coat had been laid on the road in early 1990 and refuse collection services had been provided since the houses were built. But, the road had not been adopted and so there was no street maintenance. Of greater concern, the residue of the site had been left as waste ground which was partly used, by the developer, as a temporary holding site for top soil from other developments. The undeveloped sites had become overgrown and the surplus top soil that had been piled there, in turn, had also become overgrown. The scale of the dumping had varied from time to time. Some builders rubble had also been dumped. Mr Browne accepted that Mr Boyde was in a better position to comment on fly dumping but saw none on his inspections.

Mr Boyde said he had been received sympathetically by officials of the District Council and the Department of the Environment but these apparently were not problems that they could address in any sort of effective way.

Following an application in May 1993 the District Valuer had reduced the assessment from £390 to £350 but refused any further reduction following applications in June 1995 and April 1998. The latter decision was appealed to the Commissioner who declined to alter the assessment. So, he had been given an allowance of about 10%, which the Commissioner considered “adequately reflects the nuisance suffered from the adjoining undeveloped site”. Mr Boyde would accept the NAV of £390 in the absence of the nuisance, but he thought that was nothing like enough for the nuisance and blight.

The relevant circumstances were those at June 1998. At the Hearing, Mr Boyde referred to an item that had been broadcast, on a local television programme, and which might be a helpful guide to the then extent of the problem. The parties subsequently agreed that the Tribunal should view the video of the programme, recorded on 12th November 1997, some photographs taken on behalf of the Commissioner on 27th November 1998, and they would exchange and submit further brief written comments. That was done and the Tribunal also has viewed the location.

All three occupiers in the cul-de-sac had been given an allowance of 10%. Mr Boyde said that the two neighbours on the site had thought they had appealed: they felt the same way. But they had not actually appealed and Mr Browne deduced that they had reluctantly accepted the allowance.

No allowance had been made on the adjoining street although some houses there backed on to parts of the same site.

In Mr Brown’s view the allowance of 10% was appropriate and was at the top end the usual range of allowances for nuisances, about 5-10%.

Not without sympathy for the appellant, but for the following reasons the Tribunal finds that it must refuse the appeal:

- Mr Boyde had agreed that, in ordinary circumstances, £390 would be a fair valuation;
- Although Mr Boyde had better first hand knowledge of the problems and Mr Browne may have slightly underestimated some of them, in particular in making a distinction in the relative effect on the three houses, the Tribunal is not persuaded that the factual basis on which the latter based his valuation was significantly incorrect;
- Mr Browne was an expert witness and his first duty in giving evidence was to assist the Tribunal in an impartial way. He had considerable experience of rating and the issues of allowances, and his opinion was that the allowance, of £40 (ie about 10%) was not an unfair allowance;

- Although the Tribunal accepts that the neighbours may well have intended to join in appealing, the common reduction of about 10% does support Mr Brown's conclusions;
- Mrs Kyle's trawl of previous decisions of this Tribunal, although based on their own facts and expert opinions, showed them to be generally in support of an allowance of this scale;
- Any blight on the prospects of selling the property would not necessarily reflect in the same way on NAV (i.e. the Net Annual *rental* Value);
- There is a statutory presumption that the list is correct and that is a heavy burden. Mrs Kyle correctly submitted that Mr Boyde had not shown the entry in the list to be wrong.

The Tribunal was pleased to hear that there were some indications that things might be about to get a little better:

- recently some large mounds of earth had been removed,
- it appeared that the Department of the Environment had actually adopted the road on 8th April 1999, and
- Mr Browne had noted the undeveloped sites were being offered for sale in a local Estate Agents.

But, the Tribunal has not taken these matters into account as they would not have represented the circumstances at the material time.

ORDERS ACCORDINGLY

14th February 2000

**Mr M R Curry FRICS FSVA IRRV MCI.Arb
Lands Tribunal for Northern Ireland**

Appearances:

Appellant in person.

Mrs Anne Kyle - Crown Solicitor's Office - for the Respondent.